Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Unbundled Access to Network Elements	)	**WC Docket No. 04-313**
	)	
Review of the Section 251 Unbundling	)	**CC Docket No. 01-338**
Obligations of Incumbent Local Exchange	)	
Carriers	)	

COMMENTS OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

Introduction

The New Jersey Board of Public Utilities (NJBPU or Board) submits the following comments in response to the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM). On August 20, 2004, the FCC issued a Notice and Order of Proposed Rulemaking I/M/O Unbundled Access to Network Elements (WC Docket No. 04-313); Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers (CC Docket No. 01-338), seeking comment on alternative unbundling rules that will implement the obligations of Section 251 (c) (3) of the Communications Act of 1934, as amended, in a manner consistent with the U.S. Court of Appeals for the District of Columbia's decision in United States Telecom Association v. Federal Communications Commission, No. 00-1012 (decided March 2, 2004) (USTA II).

Background and Procedural History

In its NPRM, the FCC "encourage[s] state commissions and other parties to file summaries of the state proceedings."[1] Following the issuance of the Triennial Review Order (TRO) by the

[1] NPRM at ¶ 15.

FCC on August 21, 2003,[2] the Board, on its own motion, initiated a review of the aspects of the TRO which required State commissions to perform an analysis to determine if competitive local exchange carriers (CLECs) would be impaired under 47 U.S.C. § 252(d)(2)(B) without unbundled access to certain loops, transport, and local circuit switching. On September 24, 2003, the Board issued an Order requesting that interested parties file requests for intervention in the Board's TRO proceeding. The Board also requested comments from interested parties on the other issues contained in the FCC's TRO.[3] Parties were asked to limit their comments to the necessary steps that the Board needed to take to implement the TRO and whether the presumptive findings therein should be challenged at the state level. Parties were also asked to specifically identify the issues to be addressed under both the 90-day and the nine month proceedings established in the TRO. With regard to the 90 day proceeding, the Board specifically directed parties that wished to contest the FCC's rebuttable findings related to enterprise markets to file a formal petition with the Board by October 3, 2003, which was to identify specific markets and provide detailed evidence to support its arguments.[4] In response to the Board's request, initial comments were filed by twelve (12) parties on October 3, 2003 and of those 12, seven (7) parties filed reply comments on October 10, 2003.

Additionally, the Board's Order directed the advising Deputy Attorney General and the Director of the Division of Telecommunications to conduct a pre-hearing conference on October 15, 2003 to identify specific issues that needed to be resolved by the Board and to establish a

[2] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Federal Communications Commission, CC Docket Nos. 01-338, 96-98-98-147 (rel. Aug. 21, 2003) ("TRO").

[3] The following entities formally requested intervention status in the Board's proceeding: Allegiance Telecom, Inc., AT&T Communications of NJ, L.P. (AT&T), BridgeCom International/TruCom, Broadview Networks, BullsEye Telecom, InfoHighway Communications Corporation, McGraw Communications, Inc., Metropolitan Telecommunications, Inc. (MetTel), Talk America, Inc., Communications Workers of America, AFL-CIO (CWA), Conversent Communications of New Jersey, LLC, Covad Communications Company, MCI, Sprint Corporation, SNiP LiNK, LLC, Verizon New Jersey, Inc. (VNJ), Z-Tel Communications (Z-Tel), XO New Jersey, Lightship Telecom, LLC. The New Jersey Division of the Ratepayer Advocate (Advocate) also participated in the proceeding.

[4] Such proofs were to include, at a minimum, comprehensive customer-specific data including, but not limited to, the total number of customers served in New Jersey by the company at the DS1 or higher level in combination with ILEC unbundled switching, their geographic location and a comprehensive description of the impairment faced by the company in serving these customers without access to unbundled switching.

procedural schedule for the Board's consideration It also designated Commissioner Connie O. Hughes as the Presiding Officer in this matter.

Prehearing Order

Following the pre-hearing conference held on October 15, 2003, the Board issued a Prehearing Order on October 22, 2003 addressing the 90 day and nine month procedural schedules and the most efficient methods to address the issues of the TRO through the Board's proceeding. In order to provide an efficient, streamlined process which, in light of the time constraints of the TRO's deadlines, minimized the issuance of repetitive requests by multiple parties, the Board directed the Staff to initiate the discovery process by propounding an initial round of discovery by October 27, 2003. Other Parties were permitted to propound discovery and information requests anytime after receiving and reviewing Staff's initial questions.

90-day Proceeding

On October 3, 2003, the Board received a Joint Petition from BridgeCom International, Inc. (BridgeCom), InfoHighway Communications Corporation and TruCom Corporation (TruCom) (collectively referred to herein as Joint Petitioners) requesting that the Board petition the FCC for a waiver of its national finding that CLECs are not impaired without access to unbundled local switching for enterprise customers served at the DS1 level.

Subsequently, the Joint Petitioners filed a letter with the Board on October 9, 2003, advising that the Second Circuit Court of Appeals had issued a temporary administrative Stay of the 90-day requirements of the FCC's rules pending review on the merits of the motion that was initially filed on behalf of the Joint Petitioners. Because the majority of the appeal cases related to the FCC's TRO had been transferred to the Eighth Circuit Court and subsequently assigned to the United States Court of Appeals for the District of Columbia Circuit, some parties to the case questioned the validity of the temporary administrative stay issued by the Second Circuit Court. On October 3, 2003, the D.C. Circuit Court required that all relevant cases be transferred to it.

In its Prehearing Order of October 22, 2003, the Board recognized the temporary Stay granted by the Court of Appeals for the Second Circuit as valid, and issued a temporary stay and tolled the 90 day proceeding pending a review of the merits of the Stay request by the Federal Courts. Notwithstanding the stay of the 90-day proceedings, at its October 22, 2003 Agenda Meeting,

Staff advised the Board that that it believed the Petition as filed was deficient and absent a filing from the Joint Petitioners to cure the deficiencies within seven days of the Board's Prehearing Order, the Staff would recommend that the Petition be dismissed. On November 4 and 5, 2003, the Board received two Joint Amended Petitions: one on behalf of InfoHighway Communications Corporation, MetTel, and McGraw Communications, Inc; and the other on behalf of BridgeCom and TruCom. The Joint Petitioners filed direct testimony on their respective petitions on November 25, 2003, and VNJ filed rebuttal testimony on December 2, 2003.

Prior to the hearings scheduled for December 8 and 9, 2003, the parties agreed to stipulate to the testimony of the witnesses into the record and waived cross-examination of the witnesses. Initial Briefs were filed on December 18, 2003, and reply briefs were filed on December 29, 2003.

In evaluating the Joint Petitioners' requests, the Board found that the Joint Petitioners had not met their burden in this case and that the data and analyses provided by the Joint Petitioners lacked substance. Accordingly, at its January 23, 2004 Agenda Meeting, the Board ruled that CLECs are not impaired without access to unbundled local switching for enterprise customers and therefore denied the Joint Petitioners' petitions.

Hot Cuts

The FCC's TRO specifically directed states to approve a batch hot cut process to address both the costs and timeliness of the hot cut process. The FCC found in its TRO that a batch hot cut process is essential to achieving true facilities-based competition. In its September 13, 2002 Order on Reconsideration[5], the Board also recognized the role that hot cuts play in transitioning customers over to CLEC facilities when it approved a $35.00 promotional hot cut rate for VNJ, and advised the company that it would revisit the hot cut issue six months prior to the expiration of the promotional hot cut rate and investigate whether automation of hot cuts is possible.

[5] See Decision and Order, I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Docket No. TO00060356 (September 13, 2002). ("Order on Reconsideration").
Bell Atlantic-New Jersey, Inc., Docket No. TO00060356 (September 13, 2002). ("Order on Reconsideration").

In its Prehearing Order, the Board found that there were enough common issues of fact and law to VNJ's promotional "single" hot cut review and the review that will need to be undertaken to develop a batch hot cut to consolidate the two issues. The combination of the two issues would permit the parties to focus their efforts on resolving two similar issues simultaneously and would permit the Board to institute new single hot cut and batch cut procedures and rates by the expiration of VNJ's promotional offering in March 2004. In order to accomplish this, the Board commenced a separate proceeding in a collaborative technical workshop format, limited to technical subject matter experts, to investigate the feasibility of automating hot cuts as envisioned by the Board 's Order on Reconsideration and to develop a batch hot cut process as required by the FCC. Pursuant to the Board's directives, parties convened an initial meeting on November 3, 2003 to define the parameters of the collaborative and establish a schedule that results in the implementation of both a batch hot cut procedure and rate and single hot cut procedure and rate no later than March 5, 2004. In order to achieve this goal, the Board directed VNJ in its Prehearing Order to file its rate and cost information for both of the aforementioned hot cut processes with the Board, with copies to the parties, by no later than December 10, 2003, and approved a procedural schedule with evidentiary hearings.

Evidentiary hearings on the hot cut rate were conducted on May 24 and 25, 2004. Parties filed initial briefs on July 2, 2004 and reply briefs on July 16, 2004 . To date, no decision has been rendered by the Board.

Nine-month Proceeding

In response to the parties' concerns regarding the early identification of the geographic markets that VNJ intends to use in its analysis and the identification of customer specific locations for high capacity loops and specific routes for dedicated transport, VNJ agreed and the Board directed the company to file its prima facie case no later than December 3, 2003, in which it was required to affirmatively set forth the company's challenge of impairment relative to mass market switching, high capacity loops and dedicated transport. For mass market switching, the company was required, at a minimum, to clearly identify the markets in which it sought a finding of non-impairment consistent with the FCC's requirements in its TRO and provide meaningful data to support the company's contention. Identification of the markets were to include a clear articulation of the market definition and the relevant geographic area that the company used in its analysis. In addition, clear identification of the demarcation point between the mass and

enterprise markets was required. The Company was also required to specifically and unambiguously identify each trigger which it contended had been met and identify the carriers that VNJ believed met the requirements of the rule, as well as both the quantified and qualitative data that it relied upon in reaching its conclusion.

With respect to the high capacity loops and dedicated transport, VNJ was required to identify each customer location (for high capacity loops) and each individual transport route where VNJ challenged the FCC's nationwide finding of impairment, identify the specific trigger or triggers that it contended were satisfied for each customer location or transport route, identify the UNE (DS1, DS3 or dark fiber) for which it contended that each trigger was satisfied for the customer location or transport route, identify the carriers it contended qualified for satisfaction of each trigger for the customer locations and transport routes and provide any other evidence on which the company intended to rely upon in its prima facie case to demonstrate non-impairment.

Based on the Board's directive, on December 3, 2003, VNJ filed with the Board testimony of its witnesses, specifying the relief sought by VNJ in this proceeding. Discovery and discovery-related motion practice ensued, and a hearing schedule was established. Three days prior to the commencement of hearings in this proceeding, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") issued its decision in USTA II and vacated significant portions of the TRO, including the FCC's subdelegation to state commissions of decision-making authority over impairment determinations. The D.C. Circuit temporarily stayed its vacatur "until no later than the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from [March 2, 2004]."[6]. On April 14, 2004, at the request of the FCC, the Court extended its temporary stay for an additional 45 days, or until June 15, 2004.

On March 3, 2004, VNJ filed an expedited motion asking the Board to immediately stay further non-hot cut related proceedings in this docket until such time as there was a determination on the states' role following a determination on remand by the FCC. Shortly thereafter, a telephone conference with the active parties was conducted to discuss the impact of the Court Opinion on the proceeding in this docket. The parties were informed of the Board's receipt of an Emergency Motion of Verizon New Jersey Inc. for a Ruling Staying the Board's Proceedings Implementing the FCC's Triennial Review Order ("VNJ's Motion for a Stay"). The parties discussed and

[6] Court Opinion at 61.

ultimately agreed to adjourn the hearing scheduled in this docket for Friday, March 5, 2004. The parties further agreed to file their responses to VNJ's Motion for a Stay and to offer their comments on other alternatives, including the procedure adopted by the Florida Public Service Commission ("Florida procedure") in staying its proceeding in Docket No. 030852. Subsequently, Commissioner Connie O. Hughes issued an Order notifying the parties that the hearings scheduled for Friday, March 5, 11 and 12, 2004 were adjourned to allow the entire Board the opportunity to consider VNJ's Motion for a Stay at its next scheduled agenda meeting. The parties were directed to file their responses to VNJ's Motion for a Stay by Friday, March 5, 2004.

At the Board's March 17, 2004 Agenda Meeting, the Board determined that there was undeniable uncertainty caused by the D.C. Circuit's decision that could impact the governing standard of review. Based upon this finding, the Board granted VNJ's Motion for a Stay conditioned upon VNJ's agreement that it would forebear seeking relief from the FCC on the basis that the Board did not timely complete its obligations in this proceeding, and would toll the time period beginning March 5, 2004 (the first scheduled day of hearings in this proceeding) up to and until July 2, 2004 (or any other time period that the FCC or other authority shall deem to be the final date for completion of state commissions' impairment cases), thereby allowing the Board, at a minimum, the same amount of time it would otherwise have had to complete its obligations under the TRO absent the stay. The Board thereby adopted a process similar to the Florida procedure. The parties were directed to appear at the Board on March 19, 2004, where Verizon's counsel placed on the record VNJ's agreement to forebear from petitioning the FCC to itself decide the triggers-related issues before the Board as described in the Board's March 17, 2004 Order, and the parties moved all pre-filed testimony and associated exhibits into the record.

On May 14, 2004, Commissioner Connie O. Hughes issued a Request for Comments from interested parties on the impact of the Court Opinion and VNJ's obligation under both existing federal and State requirements. On June 1, 2004, in response to the Request for Comments, the Board received comments from 24 CLECs, the Advocate and VNJ. Additionally, the Advocate, BridgeCom International, Inc. and TruCom Corporation, Broadview Networks, Inc., BullsEye Telecom, Inc., InfoHighway Communications Corp., Line Systems, Inc., Spectrotel Inc., SNiPLiNK LLC, XO New Jersey, Inc., the Competitive Carrier Coalition, Conversent

Communications of New Jersey, LLC, and AT&T requested that the Board issue an Order directing VNJ to abide by the Board's existing Orders and to continue to provide all UNEs and UNE combinations, in order to preserve the status quo until a final resolution is achieved.

At its June 9, 2004 Agenda Meeting, the Board ordered that unless the parties agree to modify their interconnection agreements (ICAs), VNJ must continue the status quo with respect to providing unbundled network elements (UNEs), combinations thereof, and the UNE Platform (UNE-P) to CLECs with which it has executed Board-approved ICAs for, at a minimum, 90 days from notice after issuance of the D.C. Circuit's mandate. (Standstill Order) The Board further ordered that any modifications to the rates, terms or conditions contained in approved ICAs during or after the 90-day period must be approved by the Board, consistent with applicable law, and would be subject to such final orders as the Board may thereafter issue. The Board stated that it would continue to monitor developments related to the issues discussed in its Order and take further action, including the issuance of further orders as it may determine to be necessary, to ensure that all parties' rights are preserved and that any actions taken comport with applicable law.

The Board's Standstill Order became effective on June 18, 2004. On July 20, 2004, AT&T filed a Petition for Clarification of the Board's Standstill Order, in response to two written notices which Verizon sent to various CLECs in New Jersey on May 18, 2004. The two notices stated, *inter alia*, Verizon's intention to discontinue providing CLECs with unbundled access to enterprise switching and/or switching subject to the so-called "Four Line Carve-Out Rule"[7] as of August 22, 2004.[8] In its Petition, AT&T argued that the Board's Standstill Order precludes Verizon from discontinuing its provision of enterprise switching and switching subject to the Four Line Carve-Out Rule to requesting CLECs, since these unilateral actions by VNJ change the status quo with respect to the provision of UNEs in New Jersey.[9] On July 29, 2004, Verizon submitted papers in opposition to AT&T's petition, contending that the 90 day freeze set out in

[7] Verizon stated that this rule exempted from unbundling any ILEC switching used by CLECs to serve customers with four or more DS0 loops in density zone 1 of the top fifty Metropolitan Statistical Areas (MSAs).

[8] Follow-up notices were sent on July 2, 2004. Other New Jersey CLECs received their first notices of discontinuance on July 2, 2004.

[9] On July 28, 2004, the Board received a joint filing from BridgeCom and TruCom, and a responsive filing from the RPA in support of AT&T's request for clarification of the Board's Standstill Order. On August 3, 2004, the Board received a letter from Broadview Networks, Inc. in support of AT&T's Petition.

the Standstill Order applies only to UNEs affected by the USTA II mandate (mass-market switching and high-capacity facilities) which were challenged on appeal and vacated by the D.C. Circuit. Verizon also argued that the imposition of the Four Line Carve Out Rule is mandatory according to FCC regulation.

Following its review of the parties' submissions and the controlling law in this matter, on August 18, 2004, the Board issued its Order on AT&T's Petition for Clarification, finding that: 1) Verizon may lawfully cease to provide unbundled switching and shared transport in connection with Enterprise Switching to CLECs for enterprise customers on August 22, 2004, in accordance with the TRO and the Board's Order Denying Waiver Request, dated January 23, 2004; and 2) pursuant to the Board's Standstill Order of June 18, 2004, Verizon may not cease to provide unbundled switching for any CLEC allegedly subject to the Four Line Carve-Out Rule on August 22, 2004, if such switching has heretofore been provided. The Board also reserved the right to determine whether and how to exercise further review of proposed changes to interconnection agreements, in accordance with its Standstill Order and relevant interim FCC rules.

On August 24, 2004, VNJ filed a request for the Board to reconsider its Order on AT&T's Motion for Clarification. The Board has not taken action on the Petition yet. On September 14, 2004, VNJ filed a Complaint for Declaratory and Injunctive Relief against the Board, and its' Commissioners, in their official capacities, in the United States District Court for the District of New Jersey seeking to prevent the Board from enforcing its June 18, 2004 Standstill Order, and its August 18, 2004 Order on AT&T's Motion for Clarification.

In addition to providing the FCC summaries of the state proceedings, the FCC also asked interested parties to comment on alternative unbundling rules that should be implemented to satisfy the USTA II decision. In the interest of a complete and factual record, Staff convened a meeting of interested parties on September 17, 2004 to discuss the most efficient means to submit the summaries, data and information requested by the FCC in its NPRM. So that the record would accurately portray the parties' positions, it was decided that the most prudent course of action would be to allow each party the opportunity to submit their own data and information directly to the FCC consistent with the NPRM.

Board Comments on the Development of Alternative Unbundling Rules

In 1996 Congress passed comprehensive telecommunications reform amending the existing law which had been in place since 1934. The revised law and subsequent rules promulgated by the FCC were predicated on rapid technological changes that made it possible for more than a single telecommunications carrier to provide service in a geographic area on a cost effective basis. The rules were designed to promote local telephone competition by opening markets to competition by removing existing statutory and regulatory impediments. (1996 rule at 3)

In crafting its 1996 rules, the FCC found that "the relationship between fostering competition in local telecommunications markets and promoting greater competition in the long distance markets is fundamental to the 1996 Act. (1996 rule at 4) In arriving at this conclusion, the FCC reasoned that local exchange competition "was desirable, not only because of the social and economic benefits competition will bring to consumers of *local* services, but also because competition eventually will eliminate the ability of an incumbent local exchange carrier to use its control of bottleneck facilities to impede free market competition." (FCC rule at 4) In developing its rules, the FCC cited that "[t]he opening of all telecommunications markets to all providers will blur traditional industry distinctions and bring packages of services, lower prices and increased innovation to American consumers" (FCC rule at 4) as a major benefit of revising the old regulatory scheme. In exchange for opening their networks to local competition, incumbent local exchange carriers (ILECs) were given the ability to petition the FCC for approval to offer long distance service in competition with CLECs provided certain pre-conditions were met. This important tradeoff was intended to strike a balance between the interests of the competing carriers and to ensure a level playing field.

While the Board is mindful of the recent USTA II decision and the magnitude of the task currently before the FCC, we caution the FCC to consider the ramifications of its actions as it sets out to implement the recent court mandate utilizing the data and information it receives from the parties. The final rules promulgated by the FCC will not only determine which network elements will continue to be made available to CLECs, but it will also have profound consequences on the future of local exchange competition in the State of New Jersey.

Even before the Telco Act of 1996, New Jersey has endeavored to open the market for telecommunications services within its state borders through various Board initiatives. Those initiatives have proven extremely successful in providing the State's residential and business customers with increased choices and options. To date, more than 1 million residential and business customers are being served by competitive carriers in New Jersey. These inroads have provided both direct and indirect benefits to the state's businesses and consumers through increased choice and options in telephone services, as well as the creation of new jobs. The success in New Jersey can be directly attributable to the pro-competitive policies adopted by the Board in correctly applying the FCC's rules since their introduction. The FCC must not impede the progress that this Board has so diligently worked to promote by overlooking the fact that state commissions are best positioned to implement policies that clearly impact the local level. With the ability to analyze local conditions, the Board has been able to monitor the development of local exchange competition and has, in fact, adjusted UNE rates, both up and down, based upon the unique facts and information that are present in New Jersey's competitive telecommunications market. Today our current UNE TELRIC-compliant rates are among the lowest in the nation, and the availability of UNE-P has played a considerable role in the ability of competitive carriers to achieve entry.

However, the Board is deeply concerned with the prospect of a changed role for state commissions such as New Jersey, or worse yet, the implementation of new policies and rules which will eradicate the progress this Commission has strived to achieve since before the enactment of the 1996 Act. We are particularly troubled by the prospect of a rule that would diminish state commissions' involvement to one in which we would simply gather, compile and neatly package data which would be provided to the FCC for final disposition. In fact, the Board believes that it is vital to the continued development of local exchange competition for state commissions to be involved in such determinations based upon the unique circumstances that are present at the local level. Without local input, the FCC's overall goal of creating a national pro-competitive, deregulatory environment may in fact result in less competition as once vibrant competitors leave the marketplace due to rules that clearly favor one competitor over another.

The Board firmly believes that the states should continue to have a significant role in developing policies to facilitate local exchange competition and for preserving the competitive framework initiated by the states, consistent with the 1996 Act and subsequent court decisions. When

Congress enacted the local market-opening provisions in the 1996 Act, it affirmed and extended the long-standing relationship of the Federal and State governments as partners in implementing telecommunications policy. While the FCC is charged with adopting overall rules implementing the market-opening provisions of the Act, State commissions have the vital task of arbitrating disputes between incumbents and new entrants that arise from the FCC's rules, including determining how the incumbent providers unbundle the required network elements and the rates for these elements. In addition, Congress explicitly preserved large areas of State authority, including the ability of States to establish additional network access obligations, so long as they are consistent with and do not substantially prevent implementation of the requirements of the 1996 Act.

We urge the FCC to continue to give the states discretion, consistent with the D.C. Circuit's guidance, so we have the opportunity to tailor policies based upon local conditions. To this end, we urge the FCC not to set rigid mandatory nationwide rules that cannot account for the unique circumstances in each individual state. The risk of harm to New Jersey consumers, in the event of market disruption, is great. The FCC must allow states, at a minimum, the ability to rebut presumptive national findings and/or a consultative role, either of which are clearly consistent with the D.C. Circuit's decision.

Regardless of any changes or modifications to the current rules, the Board believes that there must be a transition that results in the least disruption in the market as possible. This Board has taken steps to help ease the transition by ordering an extension of the *status quo* so as not to permit abrupt service and/or pricing changes. This activity is entirely consistent with the FCC's interim rules, which seek to avoid circumstances that can lead to existing UNE arrangements being terminated prematurely without an orderly transition mechanism in place.

The Board is also seriously concerned that the FCC seeks to invoke automatic price increases after 6 months; particularly when no such authority to do so exists. The States, consistent with the 1996 Act, have been given the duty of setting UNE prices consistent with the FCC TELRIC methodology. The proposed automatic $1.00 and/or 15% price increases contained in the NPRM are not only unjustified, they are not based on any cost methodology, let alone TELRIC, and are illegal. The States' role in setting UNE rates has not been affected by USTA II and this provision should be stricken from the proposed rules and/or interim order.

Conclusion

As the FCC begins the process of developing revised local competition rules in accordance with the USTA II decision, the NJBPU urges the FCC not to lose sight of the delicate balance that must be struck between the interests of the competing carriers and the progress already achieved at the state level to promote local competition. Since before the release of the FCC's 1996 Local Competition Order, the NJBPU has endeavored to promote local competition at the state level using the framework provided by the FCC as well as the guidance from court decisions. However, the Board is concerned that the FCC may implement final rules that result in a loss of the ability of state commissions, such as New Jersey, to respond to local concerns. Equally as alarming is the fact that the FCC has already concluded that automatic price increases are merited without even performing a detailed analysis, let alone, including state involvement. The NJBPU therefore requests that the FCC address these issues in its upcoming NPRM.

Respectfully submitted,

New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

DATED: October 4, 2004

/S/
JEANNE M. FOX
PRESIDENT

/S/
FREDERICK F. BUTLER
COMMISSIONER

/S/
CAROL J. MURPHY
COMMISSIONER

/S/
CONNIE O. HUGHES
COMMISSIONER

/S/
JACK ALTER
COMMISSIONER